The Appellant/Sole Accused viz M.L. Balasuramaniam was directed to be released on Bail in and by the order of this Court dated 24/12/98 and made in Crl.MP.No. 11394/98 in Crl.A.No.1122/1998.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 1122 of 1998

M.L.Balasubramaniam .. Appellant/accused

-vs-

State by Inspector of Police
ACB/CBI,Chennai
.. Respondent/complainant

This appeal is filed against the Judgment made in C.C.No.140 of 1997 dated 30.11.1998 by the learned Principal Special Judge/Principal Special Judge for CBI Cases,Chennai.

For appellant : : Mr.K.Shanker
for Mr.S.Ramasamy

For respondent : : Mr.N.Chandrasekaran
Special Public Prosecutor
for C.B.I.Cases

JUDGMENT

This appeal has been preferred against the Judgment in C.C.No.140 of 1997 on the file of the Principal Special Judge/Principal Special Judge for CBI Cases, Chennai.

2. The accused Mr.M.L.Balasubramaniam was working as a Clerk-cum-Cashier at Bank of India,Melapallipattu Branch, Tiruvannamalai-Sembuvarayar District. During the relevant period ie., from 17.9.1990 to 20.8.1991, the charge against the accused is that while he was working as a Clerk-cum-Cashier at Bank of India, Melapallipattu Branch, fraudulently and dishonestly by misusing his official position as a Bank employee has misappropriated the amounts entrusted to him by the bank's customers viz., M/s. E.R.Chandrasekaran(P.W.4),T.Gangadharan(P.W.5),V.Krishnan(P.W.6) S.Appakutti(P.W.7), V.K.Krishnan(P.W.8) and T.Muthusamy(P.W.9). When the

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above said witnesses came to deposit the amounts in the said branch of Bank of India, the amounts were received by the accused as a Cashier of the said Bank and in token of receipt of the said amount, he had made relevant entries in the pay-in-slip, passbook of the account holders and initialled it. But without remitting the said amount, had made false entries in the ledger without making entries in the scroll book and cash receipt book and thereby misappropriated a total amount of Rs.58,500/-. Hence the accused has been charged under Section 409,477A,201 I.P.C and Section 13(2) r/w 13(1)(c)and (d) of the Prevention of Corruption Act 1988 and the accused was dismissed from service on 22.11.1993.

3. The case was taken on file by the Principal Special Judge for CBI Cases and on appearance of the accused on summons copies under Section 207 Cr.P.C. were furnished to the accused and the charges were framed under the provision of law and when questioned, the accused pleaded not guilty .

4. On the side of the prosecution ,P.Ws 1 to 11 were examined and Exs P1 to P44 were exhibited.

4a) P.W.1 is the then Manager of Bank of India, Melapallipattu Branch. He speaks about the procedure followed in the Bank, when the deposit is made by the customer of the Bank in Savings Bank Accounts. He would depose that whenever the amount is deposited with the bank by the customer, necessary entries will be made by the cashier in the passbook of the customer and the counterfoil will be given to the depositor with cashier's initials and at the time, some of the depositors , after getting necessary entries in the chalans used to go near scroll section but without depositing the amount leave the Bank and in the evening after the bank transactions are over, the ledger maintained by the cashier will be checked with the entries in the scroll book and the entries relating to the customers who have failed to deposit the amount will be removed from the scroll book by the bank employee and entries in the cash receipt book will be compared with the entries in the scroll book and that the bank working hours is from 10.00a.m., to 5.00p.m., daily with weekly holiday on Sunday.

4b) P.W.2 is now working as Manager in Bank of India at Phalghat,Kerala and was working as a Deputy Chief Officer(Personnel) Coimbatore Regional Office from December 1987 to June 1993 and at that time, he was deputed to Melapallipattu Branch in December 1991 to enquire certain irregularities committed by the accused who was working as the Cashier in the abovesaid branch. P.W.3,Thiru K.N.Varadarajan was the Officer, who had assisted P.W.2 in this regard. According to P.W.2, he had filed his report regarding the investigation, he made in the said affair in February 1992. Ex P1 is the pass book of P.W.4 Thiru E.R.Chandrasekaran who is having Saving Bank Account NO.3043 of Melapallipattu Branch of Bank of India. There is an entry on 17.9.1990 for the deposit of Rs.4500/- in Ex P1. The said entry is Ex P2 which was made by the Cashier/the accused in token of having received Rs.4,500/- in cash from the account holder and

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the accused has also initialled the same. But the amount was not entered into the receipt book and scroll book, maintained by the account section. Ex P3 is the xerox copy of the scroll book dated 17.9.1990. Ex P4 is the cash receipt book for the entries made on 17.9.1990. P.W.2 would depose that there is no corresponding entries made either in Ex P3 or in Ex P4 for having received Rs.4,500/- by the accused under Ex P2.

4c) On 13.5.1991 a sum of Rs.6,000/- was received from T.Gangadharan (P.W.5) for the credit of his loan account Ex P6. As in the previous case, there was no corresponding entry made in the scroll book Ex P7 or in the Cash receipt Book Ex P8 for the entry made in Ex P6, pay-in-slip for the receipt of Rs.6,000/- from P.W.5. There was also no corresponding entry made in Ex P9 Ledger. The said Customer Gangadharan had deposited Rs 1,000/- under Ex P10 pay-in-slip towards the medium term loan obtained by the said Gangadharan under ExP10, the accused as a Cashier has initialled. But there is no corresponding entries made in Ex P11 scroll book and in Ex P12 Cash receipt book. Further there is no corresponding entries made in Ex P9 Ledger for the receipt of Rs.1000/- from P.W.5 on 20.6.1991. On 30.5.1991, P.W8 Thiru V.Krishnan has deposited Rs.3,500/- towards his loan account under Ex P13 pay-in-slip in which the accused had signed. But there is no corresponding entry in Ex P14 scroll book and Ex P15 Cash receipt book. But the accused has made an entry in Ex P16 Ledger extract. But this amount was not brought to the account of the bank. One Thiru T. Muthusamy(P.W.9) has deposited Rs.3,500/-on 30.5.1991 under Ex P17 pay-in-slip. But there is no corresponding entry in Ex P14 scroll book and Ex P15 cash receipt book. In the Ledger account Ex P18, the accused had made an entry for the deposit of Rs.3,500/- by P.W.9 and subsequently, it has been scored off. On 12.8.1991, Thiru K.Krishnan (P.W.6) has deposited Rs.10,000/- towards Jewel Loan account for which the accused had made necessary entries in Ex P19. But the said amount was not entered by him in the scroll book Ex P20 and cash receipt book Ex P21. The accused had made an entry in Ex P22 for the deposit of Rs.10,000/- by P.W.6. But instead of entering the date of receipt of the amount as 12.8.1991 he had put the date of receipt of the amount as 2.8.1991 thereby making false entries in the account books maintained in the said Bank. Further he has made a false entry in the said account as to appear that the account was closed and the jewels were realised. P.W.7 Appakutty, the another customer of the said Bank had deposited Rs.13,000/- in his S.B.A/c No.903 and the accused had given two counterfoils one is for Rs.10,000/- under Ex P23 and another is for Rs.3,000/- under Ex P24. The corresponding entries made in the receipt scroll book Ex P25 and cash receipt book Ex P26. ExP27 is the passbook of Appakutty. Ex P28 is the relevant entries for the deposit of Rs.10,000/- and Rs.3,000/- by P.W.7 Appukutty. In the Ledger account Ex P29, there is an entry for Rs.3,000/- on 18.7.1991 later "1" was added to make it appear as Rs.13,000/- was deposited. Ex P30 is the said manipulated entry.On 20.8.1991, P.W.7 Appakutty had deposited Rs.30,000/- in his S.B.A/c No.903. In Ex P27, passbook, three entries for Rs.10,000/- each has been made by the accused. The said entries are Ex P31 series.But in Ex P32 scroll book, there is an entry for Rs10,000/- alone

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finds a place and Ex P33 is the cash receipt book. Ex P34 is the entry for the above said Rs.10,000/- in Ex P32 receipt scroll book. The entry for Rs.10,000/- in Ex P33 cash receipt book is Ex P35. Under Ex P36 and Ex P37, the accused has manipulated the entries of Rs.2000/- as Rs.12,000/- and a deposit entry for Rs.10,000/- was changed as Rs.20,000/-.Ex P38 is the original counterfoil for Rs.2,000/- dated 22.8.1991 issued by the accused. This entry has later been converted as Rs.12,000/- under Ex P37 because of this manipulations in all the entries in the bank ledger, the bank has to pay Rs.30,000/- to P.W.7.

4d) P.W.3 was the Officer of Bank of India, Melapallipattu Branch from 1991 to July 1993. According to him, when the accounts of the Said branch of Bank of India was checked, there were certain discrepancies found in the entries made in Saving Bank Account of Mr.Appakuttu(P.W.7) and accounts do not tally and it was found that some alterations in the savings Bank Account of P.W.7 to an extent of Rs.30,000/-.Ex P29 is the attested copy of the ledger book relating to the savings Bank account No.903 of P.W.7. There was no corresponding corrections found in Ex P29 ledger book. When it was later found out that the discrepancy of the corrections were made in the hand writing of Mr.M.L.Balasubramaniam(the accused herein), then Cashier of the said branch and when this was confronted with the accused, he had admitted that the corrections in the alterations were made by him and amounts were misappropriated by him. Thereafter, the Manager had reported the matter to the Regional Manager at Coimbatore for further investigation who had deputed P.W.2 and P.W.3 to Melpallipattu Branch for investigation and that he has also assisted P.W.2 and P.W.3 for collecting relevant documents and statements from other witnesses and that in the investigation , it was brought to light that several misappropriation have been committed by the accused. On 17.9.1990 in the savings Bank account of E.R.Chandrasekaran(P.W.4) the account No.3043 in Ex P1 passbook of P.W.4, Ex P2 entry has been made by the accused. Ex P6 is the pay-in-slip of loan account of P.W.5 for Rs.6,000/-. The corresponding entries are available in Ex P7, Ex P8 and Ex P9 counterfoil for pay-in-slip in Ex P7 for the loan account of P.W.5 for Rs.1000/- and the said entries have been made by the accused on 20.6.1991. But there was no corresponding entries found in Ex P11 bank records. Ex P13 is the pay-in-slip counter foil for Rs.3,500/- for the loan amount of Thiru V.Krishnan(P.W.8). The corresponding entries are made in Ex P14 and Ex P15 and also in Ex P16 ledger. The counterfoil for pay-in-slip for Rs.3,500/- for the loan account of Thiru Muthusamy(P.W.9) is Ex P17. But there is no corresponding entry found in Ex P18 ledger. The counterfoil for pay-in-slip for the loan account of Thiru K.Krishnan(P.W.6) for Rs.10,000/- is Ex P19. But there is no corresponding entries found in Ex P20, Ex P21 and Ex P22. Ex P27 is the passbook of Appakutty(P.W.7) bearing account No.903. There are entries for credit of Rs.10,000/- on 18.7.1991 under Ex P23 and also for Rs.3,000/- under Ex P24. On 20.8.1991, there is another entry for Rs.10,000/- on 20.8.1991 and another credit entry for Rs.10,000/-. Those entries are under Exs P28 and P 31. The countrfoil for pay-in-slip of Rs.3,000/- is Ex P24 and both in Exs P23 and P24 , the

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entries have been made by the accused, M.L.Balasubramaniam. But there is no corresponding entries found in Ex P29 Ledger. But there is a corrections found in the ledger for the entries made in the account of P.W.7 Appakutty. There is also overwriting while entering the amount of Rs.20,000/- in Ex P29 Ledger extract. Ex P38 is the counterfoil for pay-in-slip of Rs.2,000/- for the savings Bank Account of P.W.7 Appakutty. For the amounts mentioned above were not credited duly in the bank account and that the investigation discloses that the accused had misappropriaed the abovesaid amounts deposited by the customers of the bank.

4e) P.W.4 E.R.Chandrasekaran is the account holder in S.B.A/c 3043 of Melapallipattu Branch of Bank of India who would admit that Ex P1 is his passbook and that on 17.9.1990 he has deposited Rs.4,500/- with the said branch of Bank of India and the said amount was received by the then Cashier(accused herein) of the Bank Thiru M.L.Balasubramaniam and that Ex P2 entry in Ex P1 passbook was made by the accused and that he came to know through the bank officials that the said amounts deposited by him were not entered in the bank records and that he had handed over the original passbook to the Regional Manager and obtained a duplicate passbook.

4f) P.W.5 Gangadharan who would depose that he had obtained a loan of Rs.2.25 lakhs from Melapallipattu Branch, Bank of India in May 1992 and that the said loan should be repaid in half yearly instalment of Rs.12,500/- each and during December 1991, he was called upon by the Bank Officials to the Bank and on verification of the payment vouchers, it was brought to light that Rs.6,000/- deposited by him in the month of May 1991 and another sum of Rs.1000/- deposited by him in June 1991 were not entered in the relevant scroll book and cash receipt book. P.W.5 would depose that Ex P6 pay-in-slip is in his own hand writing under which he had deposited Rs.6,000/- to the Cashier of the Bank/accused and that ExP6 counterfoil was issued only by the accused under his seal and signature. He would depose that on 20.6.1991 under Ex P29, he had deposited Rs.1,000/- with the Bank and the accused as Cashier had received the said amount and returned the counterfoil Ex P10 with his signature and the seal of the bank. Later he came to know from Bank officials that amount deposited by him under Ex P6 and Ex P10 have not brought to the bank account.

4g) P.W.6 Thiru K.Krishnan in his evidence would depose that he had obtained jewel loan in the year 1989 from the Bank of India, Melapallipattu Branch and he had deposited Rs.10,000/- in August 1991 towards said Jewel loan and the said amount was handed over to the then Cashier of the Bank viz., Thiru M.L.Balasubramaniam /accused and that Ex P19 counterfoil was issued by the accused after receiving the said amount of Rs.10,000/- and that he had handed over the original counterfoil to CBI Inspector.

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4h) P.W.7 Mr.Appakutty would depose that he is having Savings Bank Account with Bank of India, Melapallipattu Branch to which Ex P27 passbook was supplied by the bank. In July 1991, he had deposited Rs.13,000/- with the bank and the said amount of Rs.13,000/- was received by the then Cashier/accused of the said Bank who gave two counterfoils one for Rs.10,000/- and another for Rs.3,000/- which are Exs P23 and P24 respectively. Later he had deposited Rs.30,000/- with the bank and the said amount was collected on behalf of the bank by the then Cashier/accused who had made three entries each for Rs.10,000/- in his passbook and in August 1991, he had deposited Rs.2,000/- with the Bank which was also received by the then Cashier/accused who had issued Ex P38 counterfoil for pay-in-slip under which the said amount was deposited. But later he came to know that the amount deposited by him were misappropriated by the accused and has not reached the bank.

4i) P.W.8 V.Krishnan in his evidence would depose that he had obtained a loan of Rs.25,000/- from the Bank of India, Melapallipattu Branch for his business purpose and he went to the bank along with one D.Muthusamy to Bank of India, Melapallipattu Branch for depositing a sum of Rs.3,500/- each in May 1991 and that the said amount was received by the then Cashier/accused. After receiving the said amount, the accused handed over the counterfoil of the chalan which is Ex P13 and that later he came to know that the amount deposited by him was not credited in the relevant ledgers of the bank.

4j)P.W.9 Thiru Muthusamy would depose that he had borrowed a sum of Rs.25,000/- as a loan from the Bank of India,Melpallipattu Branch for his business and in May 1991, he went along with V.Krishnan to deposit the instalment due of Rs.3,500/- and handed over the cash chalan to the Cashier/accused. After receiving the amount, the Cashier/accused handed over the counterfoil Ex P17.
Ex P17 is the original counterfoil handed over to him to the CBI Police at the time of investigation.

4k) P.W.10 is the then Inspector of Police,CBI/ACB,Chennai who had registered a case in R.C.No.25/1992 on 30.6.1992 under Sections 120(B) r/w 409,420,477A IPC and under Section 13(2) r/w 13(1)(c)(d) of the Prevention of Corruption Act 1988 against Thiru Sarangapani,Manager, Bank of India and Mr.M.L.Balasubramaniam, then Clerk cum Cashier, Bank of India,Melapallipattu Branch and after registering the case, FIR was sent to the concern Court on 25.8.1992.
Ex P39 is the First Information Report.

4l) P.W.11 is the Investigating Officer. He had examined P.Ws.1 to 9 and recorded their statements. He had collected Ex P40 the receipt memo dated 25.9.1993 from P.W.7 Appakutty. He has also collected Ex P41 and Ex P42 covering letters from the Zonal Manager, 'Bank of India'. Ex P43 is the memo dated 24.9.1993 collected from the Manager of Bank of India. He has also collected Ex P44 counter foil from P.W.6 K.Krishnan and after

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completing the formalities, he had filed the charge sheet against the accused on 17.1.1995 under Sections 409,477A, 201 IPC and Section 13(2) r/w 13(1)(c) (d) of Prevention of Corruption Act 1988. He would further depose that he has not obtained any sanction order for prosecuting the accused since the accused had already been dismissed from service.

5. When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied his complicity with the crime.

6.After going through both oral and documentary evidence let in before the trial Court, the learned trial Judge after getting himself satisfied to the fact that prima facie has been made out against the accused and the prosecution has proved the guilt of the accused beyond any reasonable doubt, had convicted and sentenced the accused under Section 409 IPC (8 counts) to undergo three years rigorous imprisonment and slapped a fine of Rs.200/- with default sentence and convicted and sentenced the accused under Section 477 A IPC (5 counts) to undergo two years rigorous imprisonment and pay a fine of Rs.200/- with default sentence and also under Section 13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act 1988 to undergo three years rigorous imprisonment under each section and to pay a fine of Rs.250/- with default sentence. The learned trial Judge has further ordered that the sentence to run concurrently. Aggrieved by the findings of the learned trial Judge, the accused has preferred this appeal.

7.When this appeal was taken up for hearing, Mr.K.Shanker, learned counsel appearing for the accused, after taking the Court to various documents filed on behalf of the prosecution and also elaborately argued regarding the issues involved in the case. But ultimately the learned counsel would submit that he will be satisfied with the modification of sentence. Heard the learned Special Public Prosecutor in this regard who has no serious objection for modifying the sentence considering the plight of the accused who had faced the trial from April 1995.

8.Under such circumstances, to meet the ends of justice,I am of the view that the minimum sentence prescribed under the Prevention of Corruption Act 1988 ie., one year can be imposed on the accused instead of three years rigorous imprisonment under Section 13(2) r/w 13(1)(c)(d) of Prevention of Corruption Act 1988 and also under Section 409 IPC and under Section 477 A of IPC.

9.In fine, this appeal is dismissed but with the following modification in the sentence alone. The accused is convicted and sentenced under Section 409 IPC to undergo one year rigorous imprisonment instead of three years and under Section 477A IPC the accused is convicted and sentenced to undergo one year rigorous imprisonment instead of two years of rigorous imprisonment and under Section 13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act 1988, the accused is convicted and sentenced to undergo one year rigorous imprisonment under each section instead of

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three years rigorous imprisonment. The fine amount imposed by the trial court shall sustain. The trial Court is directed to secure the accused to serve the sentence. The sentence is to run concurrently.

sg

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Special Judge/Principal
Special Judge for CBI Cases,Chennai

2. The Special Public Prosecutor,CBI Cases, Chennai.

3. The Inspector of Police, ACB/CBI Chennai.

4 The Superintendent of Central Prison, Chennai
KG (co)
sg 13/4/07

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